

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MICHAEL FERN, : **Case No. 1:18-CV-563**
Plaintiff, : **Judge Michael R. Barrett**
v. : **Magistrate Judge Stephanie K.**
Bowman
CITY OF CINCINNATI, :
Defendant. : **ANSWER OF DEFENDANT CITY**
OF CINCINNATI

Now comes Defendant, City of Cincinnati for its Answer to Plaintiff's Amended Complaint, by and through counsel, and states as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Defendant admits the allegations in Paragraph 1.
2. Defendant admits the allegations in Paragraph 2.
3. Regarding Paragraph 3 of the Complaint, Plaintiff pleads under the named statutes. Defendant specifically denies it violated any of those statutes.
4. Defendant admits the allegations in Paragraph 4.
5. Defendant admits the allegations in Paragraph 5.
6. Defendant admits the allegations in Paragraph 6.
7. Defendant denies for want of knowledge the allegations in Paragraph 7.
8. Defendant denies the allegations in paragraph 8.

II. FACTUAL ALLEGATIONS

9. Defendant incorporates as though fully rewritten herein, its previous answers in response to Paragraph 9 of the Complaint.

10. Defendant admits the allegations in Paragraph 10.
11. Defendant denies for want of knowledge the allegations in Paragraph 11.
12. Defendant denies for want of knowledge the allegations in Paragraph 12.
13. Defendant denies for want of knowledge the allegations in Paragraph 13.
14. Defendant admits the allegations in Paragraph 14.
15. Defendant denies the allegations in Paragraph 15.
16. Regarding Paragraph 16, Defendant admits that Plaintiff was advised that he would not receive Field Training Officer Supervisor pay and participated in a related arbitration. Defendant denies the remaining allegations in Paragraph 16.
17. Regarding Paragraph 17, Defendant admits that Plaintiff was transferred to District 2 in November 2015. Defendant denies for want of knowledge the remaining allegations in Paragraph 17.
18. Defendant denies the allegations in Paragraph 18.
19. Defendant denies the allegations in Paragraph 19.
20. Defendant denies the allegations in Paragraph 20.
21. Defendant denies the allegations in Paragraph 21.
22. Regarding Paragraph 22, Defendant admits that Plaintiff filed a Grievance with the FOP in December 2015. Defendant denies the remaining allegations in Paragraph 22.
23. Defendant denies the allegations in Paragraph 23.
24. Defendant denies the allegations in Paragraph 24.
25. Defendant denies the allegations in Paragraph 25.
26. Regarding Paragraph 26, Defendant states the policy speaks for itself.
27. Defendant denies for want of knowledge the allegations in Paragraph 27.

28. Regarding Paragraph 28, Defendant states the policy speaks for itself.
29. Defendant denies for want of knowledge the allegations in Paragraph 29.
30. Defendant denies for want of knowledge the allegations in Paragraph 30.
31. Regarding Paragraph 31, Defendant admits that Captain Jeff Butler emailed Plaintiff on December 31, 2015 informing Defendant that he was suspended from detail work and PVO. Defendant denies the remaining allegations in Paragraph 31.
32. Defendant admits the allegations in Paragraph 32.
33. Defendant denies the allegations in Paragraph 33.
34. Defendant admits the allegations in Paragraph 34.
35. Regarding Paragraph 35, Defendant admits that Plaintiff received and Evaluation Supplement Log “ESL” ordering a detail and PVO suspension for 270 days for SWOP taken on 7/18/2017 and 7/19/2017. Defendant denies the remaining allegations in Paragraph 35 for want of knowledge.
36. Regarding Paragraph 36, Defendant is not required to respond to what Plaintiff understood. Defendant denies for want of knowledge the remaining allegations in Paragraph 36.
37. Defendant denies for want of knowledge the allegations in Paragraph 37.
38. Defendant admits the allegations in Paragraph 38.
39. Defendant denies for want of knowledge the allegations in Paragraph 39.
40. Regarding Paragraph 40, Defendant is not required to respond to what Plaintiff believed. Defendant denies the remaining allegations in Paragraph 40.
41. Defendant admits the allegations in Paragraph 41.
42. Regarding Paragraph 42, Defendant is not required to respond to what Plaintiff

understood.

43. Defendant denies the allegations in Paragraph 43.
44. Regarding Paragraph 44, Defendant admits that Plaintiff contacted Captain Aaron Jones via voicemail on February 12, 2018. Defendant denies the remaining allegations in Paragraph 44.
45. Defendant admits the allegations in Paragraph 45.
46. Defendant admits the allegations in Paragraph 46.
47. Defendant admits the allegations in Paragraph 47.
48. Defendant denies the allegations in Paragraph 48.
49. Regarding Paragraph 29, Defendant admits that Cincinnati Police Department issued a Pre-Disciplinary Hearing to Plaintiff for Dishonest and Serious Insubordination for Plaintiff's conduct on February 12, 2018. Defendant denies the remaining allegations in Paragraph 49.
50. Defendant denies the allegations in Paragraph 50.
51. Regarding Paragraph 51, Defendant admits that Plaintiff was referred to PEAP (Public Employee Assistance Program). Defendant denies the remaining allegations in Paragraph 51.
52. Defendant denies the allegations in Paragraph 52.
53. Defendant denies the allegations in Paragraph 53.
54. Regarding Paragraph 54, Defendant admits that Plaintiff operated as Night Inspector on February 28, 2018, March 1, 2018, March 9, 2018, March 10, 2018, March 12, 2018, April 3, 2018, April 4, 2018, April 5, 2018, April 20, 2018, April 28, 2018, and April 29, 2018. Defendant denies the remaining allegations in Paragraph 54.

55. Defendant denies the allegations in Paragraph 55.
56. Defendant denies the allegations in Paragraph 56.
57. Regarding Paragraph 57, Defendant admits that Plaintiff is required to call Captain Jones directly for requests for time off work. Defendant denies for want of knowledge the remaining allegations in Paragraph 57.
58. Defendant denies the allegations in Paragraph 58.
59. Regarding Paragraph 59, Defendant states the policy speaks for itself.
60. Defendant denies for want of knowledge the allegations in Paragraph 60.
61. Defendant denies the allegations in Paragraph 61.
62. Defendant denies for want of knowledge the allegations in Paragraph 62.
63. Defendant denies for want of knowledge the allegations in Paragraph 63.
64. Defendant denies for want of knowledge the allegations in Paragraph 64. Defendant specifically states Plaintiff did not request a reasonable accommodation from Defendant under the ADA and City policy.
65. Defendant denies for want of knowledge the allegations in Paragraph 65.
66. Defendant denies for want of knowledge the allegations in Paragraph 66.
67. Defendant denies for want of knowledge the allegations in Paragraph 67.
68. Regarding Paragraph 68, Defendant admits Plaintiff sent a text to Captain Jones. Defendant denies the remaining allegations in 68.
69. Defendant denies the allegations in Paragraph 69.

III. COUNT 1

70. Defendant incorporates, as though fully rewritten herein, its previous answers in response to Paragraph 70 of the Complaint.
71. Regarding Paragraph 71, this paragraph contains Plaintiff's statement of the case

and legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations and legal conclusions in Paragraph 71.

72. Regarding Paragraph 72, this paragraph contains Plaintiff's statement of the case and legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations and legal conclusions in Paragraph 72.
73. Regarding Paragraph 73, Defendant admits Plaintiff is qualified to be a Police Lieutenant. Defendant denies the remaining allegations of Paragraph 73.
74. Defendant denies the allegations in Paragraph 74.
75. Defendant denies the allegations in Paragraph 75.

IV. COUNT II

76. Defendant incorporates, as though fully rewritten herein, its previous answers in response to Paragraph 76 of the Complaint.
77. Regarding Paragraph 77, this paragraph contains Plaintiff's statement of the case and legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations and legal conclusions in Paragraph 77.
78. Regarding Paragraph 78, this paragraph contains Plaintiff's statement of the case and legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations and legal conclusions in Paragraph 78.
79. Defendant denies the allegations in Paragraph 79.
80. Defendant denies the allegations in Paragraph 80.

V. COUNT III

81. Defendant incorporates, as though fully rewritten herein, its previous answers in response to Paragraph 81 of the Complaint.
82. Defendant admits the allegations of Paragraph 82.

83. Defendant denies the allegations in Paragraph 83.
84. Defendant denies the allegations and legal conclusions in Paragraph 84.
85. Defendant denies the allegations and legal conclusions in Paragraph 85.

VI. COUNT IV

86. Defendant incorporates, as though fully rewritten herein, its previous answers in response to Paragraph 86 of the Complaint.
87. Regarding Paragraph 87, Defendant admits Plaintiff has taken FMLA leave. Defendant denies for want of knowledge the remaining allegations in Paragraph 87.
88. Regarding Paragraph 88, this paragraph contains Plaintiff's statement of the case and legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations and legal conclusions in Paragraph 88.
89. Regarding Paragraph 89, Defendant admits Plaintiff was entitled to take FMLA leave in accordance with law and City procedure. Defendant denies the remaining allegations in Paragraph 89.
90. Defendant denies the allegations in Paragraph 90.
91. Defendant denies the allegations in Paragraph 91.
92. Defendant denies the allegations in Paragraph 92.
93. Defendant denies the allegations in Paragraph 91.
94. Regarding Paragraph 94, this paragraph contains Plaintiff's statement of the case and legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations and legal conclusions in Paragraph 94.
95. Defendant denies the allegations in Paragraph 95.

VII. COUNT V

96. Defendant incorporates, as though fully rewritten herein, its previous answers in response to Paragraph 96 of the Complaint.
97. Defendant denies the allegations in Paragraph 97.
98. Defendant denies the allegations in Paragraph 98.
99. Defendant denies the allegations in Paragraph 99.

Defendant denies each and every other allegation set forth in Plaintiff's Complaint not otherwise specifically admitted.

FIRST DEFENSE

1. Defendant at all times acted in conformity with the law.

SECOND DEFENSE

2. Plaintiff fails to state a cause of action upon which relief may be granted.

THIRD DEFENSE

3. Defendant at all times acted in good faith and without malice.

FOURTH DEFENSE

4. Plaintiff's claims are barred by applicable statutes of limitations and/or the doctrine of equitable estoppel.

FIFTH DEFENSE

5. Plaintiff failed to exhaust his administrative remedies and/or his Complaint is untimely.

SIXTH DEFENSE

6. The Plaintiff's claims are barred by the doctrine of governmental immunity.

SEVENTH DEFENSE

7. Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

EIGHTH DEFENSE

8. Any actions Defendant did or did not take with respect to Plaintiff were motivated by legitimate concerns, and not based on any protected activity engaged in by Plaintiff.

NINTH DEFENSE

9. Any employment decisions Defendant made with respect to Plaintiff were not based on a discriminatory animus.

TENTH DEFENSE

10. The Plaintiff is not an otherwise qualified individual with a handicap or disability.

ELEVENTH DEFENSE

11. Any actions Defendant did or did not take with respect to Plaintiff were motivated by legitimate business reasons.

TWELFTH DEFENSE

12. Any employment decisions Defendant made with respect to Plaintiff were based on bona fide occupational qualifications.

THIRTEENTH DEFENSE

13. Defendant did not treat Plaintiff in a disparate manner.

FOURTEENTH DEFENSE

14. Plaintiff was not disparately impacted by any actions Defendant took or did not take.

FIFTEENTH DEFENSE

15. The Plaintiff was not discriminated against by reason of handicap or disability.

SIXTEENTH DEFENSE

16. The Plaintiff did not request a reasonable accommodation from Defendant.

SEVENTEENTH DEFENSE

17. The Plaintiff was unable to perform the essential functions of his job.

EIGHTEENTH DEFENSE

18. Defendant had no duty to accommodate Plaintiff.

NINETEENTH DEFENSE

19. Defendant was not required to modify the essential nature of Plaintiff's job.

TWENTIETH DEFENSE

20. Defendant is not required to suffer undue hardship to accommodate Plaintiff.

TWENTY-FIRST DEFENSE

21. Defendant hereby gives notice of its intent to rely on and utilize any affirmative defense that may become available or apparent during the course of discovery and hereby reserves the right to amend its Answer to assert such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that Plaintiff's Complaint be dismissed, with prejudice, at Plaintiff's costs.

Respectfully submitted,

PAULA BOGGS MUETHING (0080018)
City Solicitor

s/Lauren Credit Mai

Lauren Credit Mai (0089498)
Julie F. Bissinger (0012055)
Assistant City Solicitors
City Hall, Room 214
801 Plum Street
Cincinnati, Ohio 45202
Telephone: (513) 352-4703
Fax: (513) 352-1515
lauren.creditmai@cincinnati-oh.gov
julie.bissinger@cincinnati-oh.gov
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2019, I electronically filed the foregoing Answer of Defendant to Complaint with the Clerk of the Court using the CMF/ECF system that will send notification of such filing to all parties of record.

s/ Lauren Credit Mai